



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,610	03/30/2004	Darin G. Schaeffer	8627-190	5422

757 7590 02/27/2007
BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610

EXAMINER

MILLER, CHERYL L

ART UNIT	PAPER NUMBER
----------	--------------

3738

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

88

Office Action Summary

Application No.

10/814,610

Applicant(s)

SCHAEFFER, DARIN G.

Examiner

Cheryl Miller

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8/5/04.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: Amendment 1-4

DETAILED ACTION

Priority

Application claims the benefit as a continuation in part of serial number 10/267,576, filed October 8, 2002, however all currently pending claims are directed to newly filed subject matter and receive the filing date of March 30, 2004.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 3 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant has claimed a plurality of unit cells EACH having two lateral arms siding a central region, however applicants figures point to that structure being present, however the cells overlap, that is if one cell has two spaced arms, the next cell only has one arm, the other shared by the first cell. This is an original claim, thus receives the priority date however does not make sense compared to the figures.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3 and 7-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites the limitations "said serpentine pattern" and "the same ring structure" in lines 1 and 6 respectively. There is insufficient antecedent basis for these limitations in the claim.

Claim 7 recites the limitation "said plurality of ring structures" in line 2. There is insufficient antecedent basis for this limitation in the claim. Claims 8-10 depend upon claim 7 and inherit all problems associated with the claim.

Claim 8 recites the limitation "said plurality of ring structures" in line 2. There is insufficient antecedent basis for this limitation in the claim.

It is noted to the applicant that claim 10 is a Markush type claim and should include the language, "selected from the group consisting of".

Claim 11 has a spelling error in line 1, with respect to "contigurations".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-8 and 11-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmitz et al. (EP 0 958 794 A2, cited in IDS). Referring to claims 1 and 17 groupings, Schmitz discloses a stent (10) having first, second, and third ring structures, a first plurality of connector segments joining the first and second ring structures and a second plurality of connector segments joining the first and third ring structures, wherein the undulation of the first connectors are axially displaced from one another and the undulation of the second connectors are axially aligned to one another. Schmitz discloses the ring structures to comprise units, each unit having two lateral arms and a central region having a peak and two valleys. Schmitz discloses the undulating connector to form u-shaped bends. Schmitz discloses pads having an enlarged and narrow throat region. See attachment 1, figure 1, where claimed structures are pointed out.

Referring to the claim 11 grouping, Schmitz discloses a stent comprising first and second axial portions, the first axial portion having a plurality of ring structures joined by axially displaced connectors and the second axial portion having another plurality of ring structures joined by axially aligned connectors. See figure 2, attachment 2.

Claims 11-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Levinson et al. (US 6,352,552 B1). Referring to the claim 17 grouping, Levinson discloses a stent having a plurality of ring structures (24, 32) joined by a plurality of connector segments (52, 70, 96, 98, 100), each of the connector segments having an undulating portion (bend 54, 76, 72, etc), wherein a first circumferential set of connector segments are axially aligned and a second circumferential set of connector segments are axially displaced. See attachment 3.

Referring to the claim 11 grouping, Levinson discloses a stent comprising first and second axial portions, the first axial portion having a plurality of ring structures joined by axially displaced connectors and the second axial portion having another plurality of ring structures joined by axially aligned connectors. See figure 1, attachment 3.

Claims 1-3, 7, 9, 11, 15, and 17-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Penn et al. (US 6,796,997 B1). Referring to the claims 1 and 17 groupings, Penn discloses a stent (10) having first, second, and third ring structures, a first plurality of connector segments joining the first and second ring structures and a second plurality of connector segments joining the first and third ring structures, wherein the undulation of the first connectors are axially displaced from one another and the undulation of the second connectors are axially aligned to one another. Penn discloses the ring structures to comprise units, each unit having two lateral arms and a central region having a peak and two valleys. Penn discloses the undulating connector to form u-shaped bends. See attachment 4.

Referring to the claim 11 grouping, Penn discloses a stent comprising first and second axial portions, the first axial portion having a plurality of ring structures (15; 50, 60) joined by axially displaced connectors (71) and the second axial portion having another plurality of ring structures (15; 50, 60) joined by axially aligned connectors (36, 41). See attachment 4.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

Art Unit: 3738

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Penn et al. (US 6,796,997 B1). Penn discloses use of drugs on the stents, however is silent to mention any particular drugs. Applicant has claimed a laundry list of possible drugs. It would have been obvious to one having ordinary skill in the art at the time the invention was made for Penn's drug to be any of the claimed drugs listed by applicant since applicant has not disclosed that any particular drug claimed has a specific purpose or provides a particular advantage over other drugs.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Miller whose telephone number is (571) 272-4755. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm.

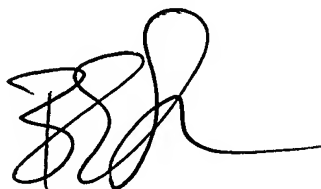
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4755. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3738

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



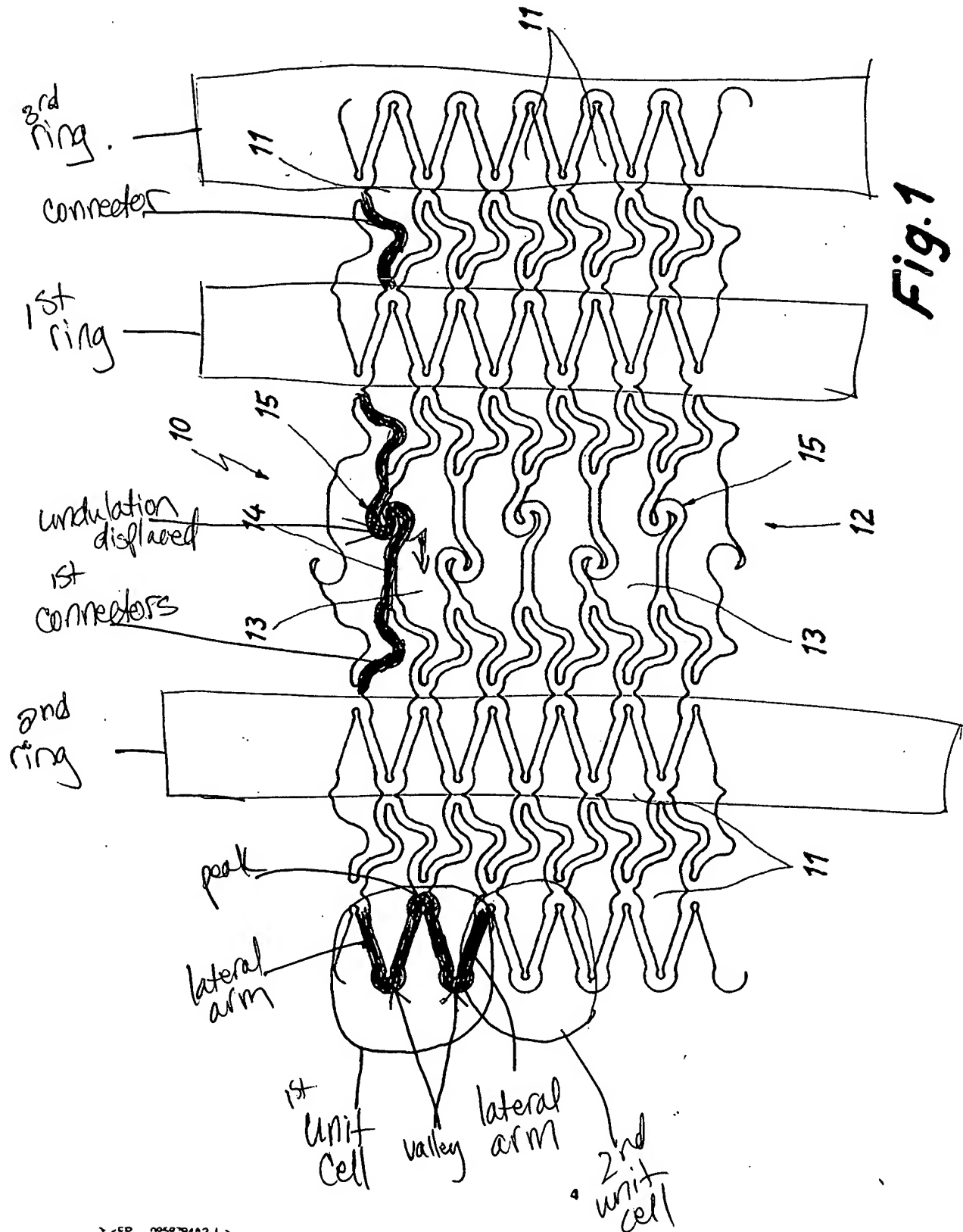
Cheryl Miller



BRUCE SNOW
PRIMARY EXAMINER

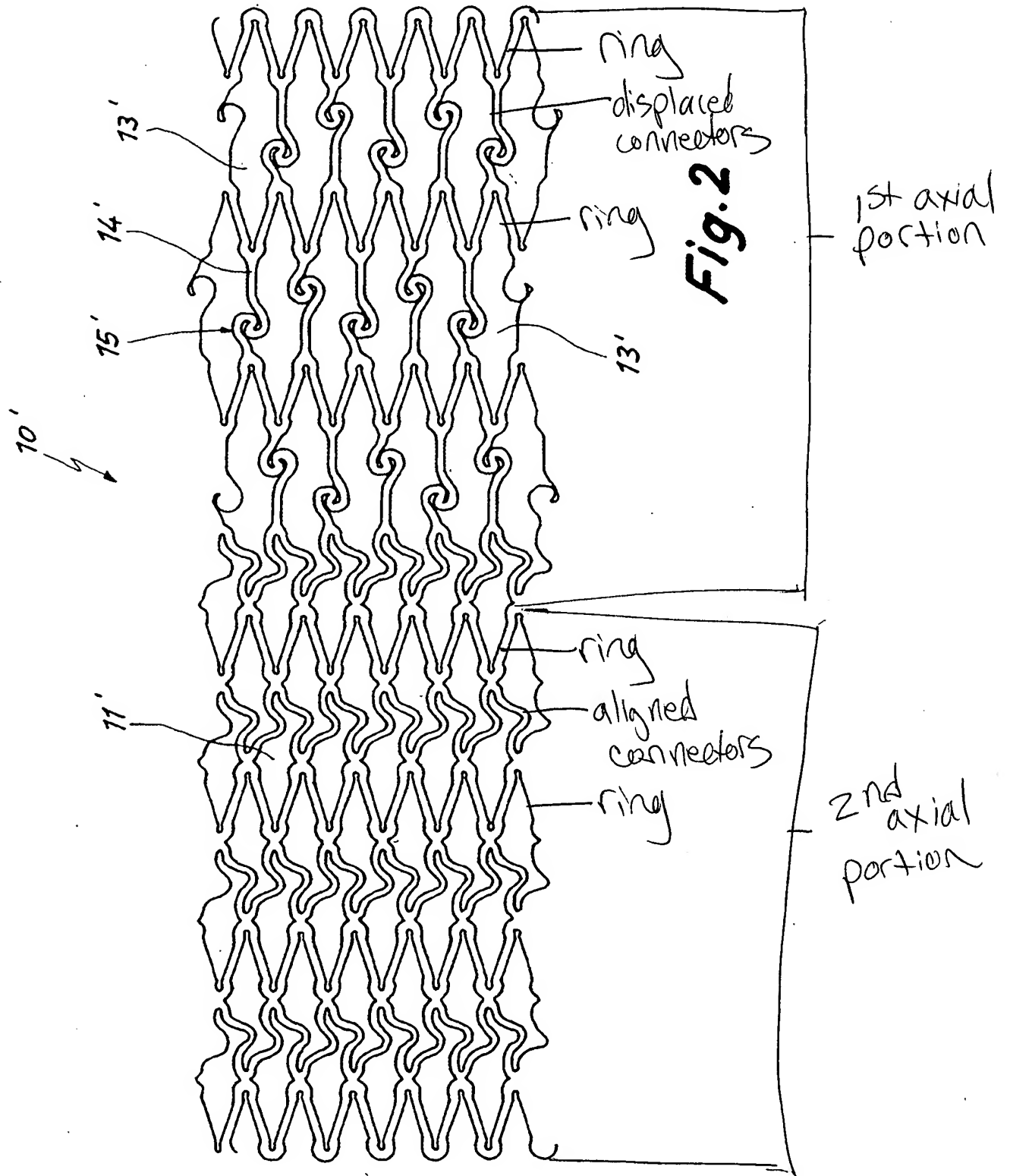
Attachment #1 (marked up)

EP 0 958 794 A2



Attachment #2 (markedup)

EP 0 958 794 A2

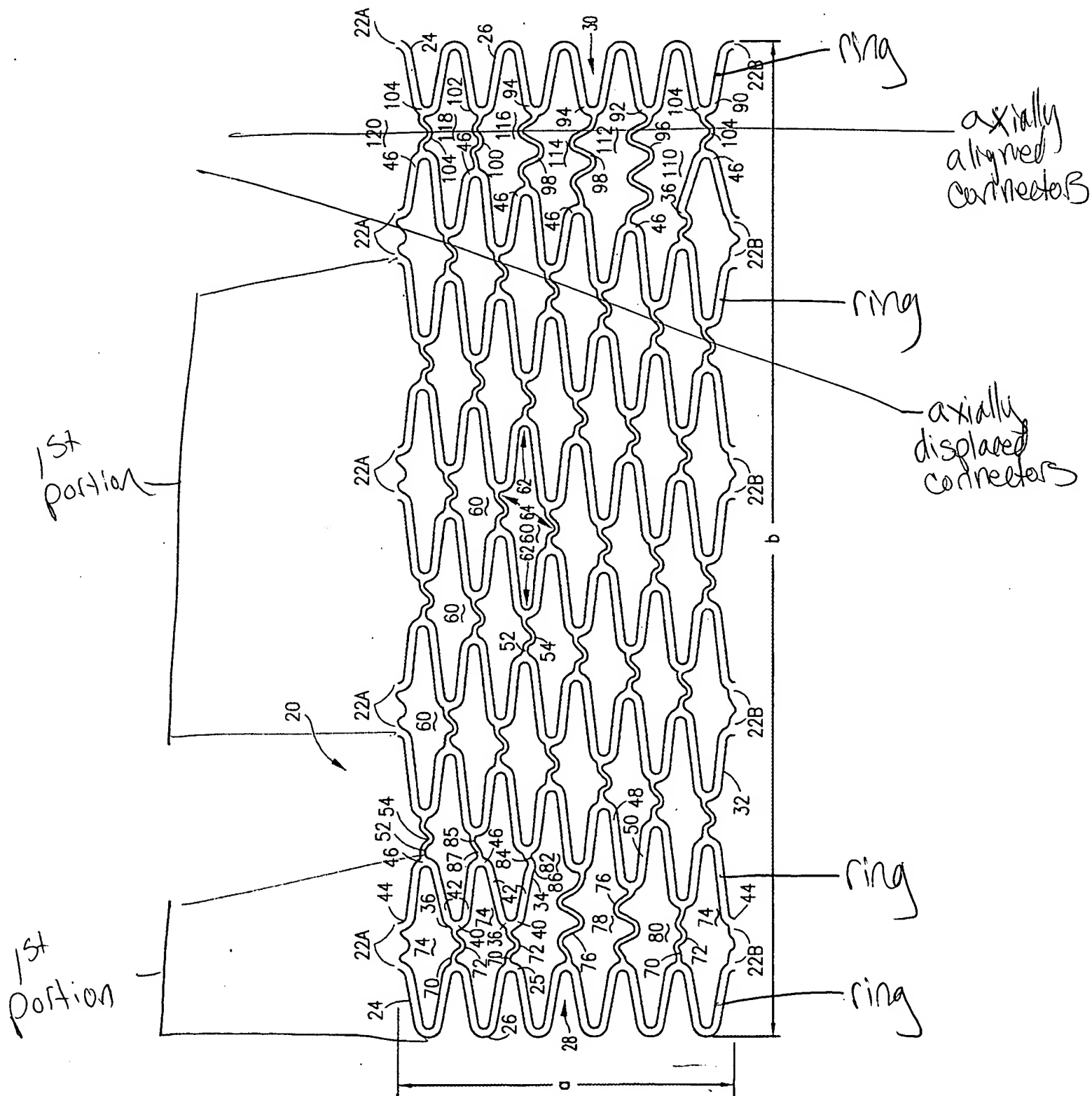


Attachment #3 (marked up)

U.S. Patent

Mar. 5, 2002

US 6,352,552 B1



Attachment # 4 (marked up)

U.S. Patent

Sep. 28, 2004

US 6,796,997 B1

↓ Claim
1, 17+

↓ Claim
11+

